

# House Study Bill 142 - Introduced

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON COMMERCE BILL BY  
CHAIRPERSON COWNIE)

## A BILL FOR

1 An Act relating to a broker's lien.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1.   NEW SECTION.   570B.1   Definitions.

2     As used in this chapter, unless the context otherwise  
3 requires:

4     1.   "*Broker*" means a real estate broker licensed under  
5 chapter 543B.

6     2.   "*Commercial property*" means any parcel of real estate  
7 in this state other than real estate containing one to four  
8 residential units.   "*Commercial property*" does not include  
9 single-family residential units such as condominiums,  
10 townhouses, manufactured housing, or homes in a subdivision  
11 when sold, leased, or otherwise conveyed on a unit-by-unit  
12 basis, even though these units may be a part of a larger  
13 building or parcel of real estate containing more than four  
14 residential units.   "*Commercial property*" also does not include  
15 real estate owned by a governmental entity.

16    3.   "*Governmental entity*" means this state, a city, county,  
17 district, institution under the control of the state board  
18 of regents, a school corporation, any other governmental  
19 subdivision, or any other public agency.

20    4.   "*Lien property*" means any interest in commercial property  
21 against which a broker has a lien pursuant to this chapter.

22    5.   "*Owner*" means a person who has a legal or equitable  
23 interest in a lien property and who enters into, or has  
24 previously entered into, a written contract with a broker for  
25 services related to selling, exchanging, purchasing, renting,  
26 or leasing any interest in the lien property.

27    Sec. 2.   NEW SECTION.   570B.2   Broker's lien.

28    1.   A broker that enters into a written contract for  
29 services related to selling, exchanging, renting, leasing, or  
30 conveying an interest in commercial property has a lien on  
31 that commercial property. The lien is effective only if the  
32 contract for services is in writing and is signed by the broker  
33 or the broker's agent and the owner of the lien property or the  
34 owner's agent.

35    2.   A broker that enters into a written contract for services

1 related to purchasing an interest in commercial property  
2 has a lien on any commercial property purchased pursuant to  
3 that contract. The lien is effective only if the contract  
4 for services is in writing and is signed by the broker or  
5 the broker's agent and the owner of the lien property or the  
6 owner's agent.

7 3. a. Only the broker named in the contract has a lien  
8 pursuant to this section and a lien is not available to any  
9 employee or independent contractor of the broker.

10 b. The amount of a lien for services related to selling,  
11 exchanging, or conveying an interest in commercial property  
12 is limited to the amount due to the broker pursuant to the  
13 contract. If the amount due to the broker is payable in  
14 installments, a portion of which is due after conveyance, the  
15 amount of the lien is limited to the amount due to the broker  
16 prior to or upon conveyance.

17 c. The amount of a lien for services related to leasing  
18 or renting an interest in commercial property is limited to  
19 the amount due to the broker pursuant to the contract. If  
20 the amount due to the broker is payable in installments, the  
21 amount of the lien is limited to the amount of all installment  
22 payments due to the broker over the life of the contract, minus  
23 the amount of any installment payments made under the contract  
24 prior to the time of the owner's default.

25 d. The amount of a lien for services related to purchasing  
26 an interest in commercial property is limited to the amount due  
27 to the broker pursuant to the contract. If the amount due to  
28 the broker is payable in installments, the amount of the lien  
29 is limited to the amount of all installment payments due to the  
30 broker over the life of the contract, minus the amount of any  
31 installment payments made under the contract prior to the time  
32 the lien is filed.

33 e. The lien is effective only against the interest in  
34 commercial property that is the subject of the contract.

35 Sec. 3. NEW SECTION. 570B.3 Perfection of lien.

1     1. *a.* A lien established pursuant to section 570B.2 is  
2 perfected when the broker is entitled to a fee or commission  
3 under the contract and has met the requirements of subsection  
4 2.

5     *b.* The lien is perfected as of the date the requirements of  
6 paragraph "a" are met and does not relate back to an earlier  
7 date.

8     2. To perfect a lien pursuant to subsection 1, paragraph  
9 "a", a broker shall comply with all of the following:

10    *a.* The broker shall record a lien in the county recorder's  
11 office of the county in which the commercial property is  
12 located. The recorder shall endorse on each notice of lien the  
13 day, hour, and minute when filed for recording and the document  
14 reference number, shall index the notice in the index and shall  
15 record the lien in the manner provided for recording real  
16 estate mortgages. The recorder shall charge and collect the  
17 fees set forth in section 331.604 for the recorder's services.

18    *b.* (1) The notice of lien shall include the name of the  
19 broker who has the lien, the name of the owner of the lien  
20 property, a legal description of the lien property, the amount  
21 for which the lien is claimed, the date and a summary of the  
22 written contract on which the lien is based, and the real  
23 estate broker license number of the broker. The notice of lien  
24 shall state that the information contained in the notice is  
25 true and accurate to the knowledge of the signatory, be signed  
26 by the broker or the broker's agent, and be verified.

27    (2) For purposes of subparagraph (1), a description that  
28 is sufficient to describe the lien property for the purpose  
29 of conveyance, or is contained in the instrument by which the  
30 owner took title, is a legal description.

31    *c.* A notice of lien based on the sale, exchange, or  
32 conveyance of lien property shall be recorded prior to the  
33 conveyance of the property.

34    *d.* A notice of lien based on the purchase of lien property  
35 shall be recorded within ninety days after the conveyance of

1 the property.

2     *e.* A notice of lien based on a lease or rental of lien  
3 property shall be recorded within ninety days after a default  
4 by the owner in the payment of an amount due under a written  
5 contract for services related to leasing or renting the lien  
6 property.

7     *f.* On the day the notice of lien is recorded, the broker  
8 shall provide a copy of the notice of lien to the owner of  
9 the lien property and, where a contract for the sale or other  
10 conveyance of the lien property has been entered into, to  
11 the prospective transferee, where known, either by personal  
12 delivery or by certified mail, return receipt requested.

13     3. Initial leases, lease renewals, and expansions of the  
14 space leased shall be treated as separate leases for purposes  
15 of subsection 2, paragraph "e".

16     Sec. 4. NEW SECTION. **570B.4 Proceedings to enforce lien.**

17     1. To commence proceedings to enforce a lien, a broker shall  
18 comply with all of the following:

19     *a.* The broker shall file a complaint in the district court  
20 in the county where the lien property, or some part of the lien  
21 property, is located.

22     *b.* (1) The complaint shall be filed within two years  
23 following the recording of the notice of lien as provided in  
24 section 570B.3, subsection 2.

25     (2) Failure to file a complaint within the time specified in  
26 this section extinguishes the lien, in which case no subsequent  
27 notice of lien may be recorded for the same claim and the claim  
28 shall not be asserted in any proceeding under this section.

29     *c.* A complaint shall identify the contract upon which  
30 the lien is based and the date of the contract, describe the  
31 services performed by the broker pursuant to the contract,  
32 specify the unpaid amounts due to the broker pursuant to the  
33 contract, specify the address of the lien property, and have a  
34 copy of the contract attached.

35     *d.* The broker shall name as defendants in the complaint all

1 parties that have a legal or equitable interest in the lien  
2 property of whom the broker has knowledge.

3     2. *a.* The owner may demand that the broker commence a  
4 suit to enforce a broker's lien by serving a written notice of  
5 demand on the broker by personal delivery or by certified mail,  
6 return receipt requested.

7     *b.* If the broker does not commence the suit or file the  
8 answer demanded within twenty-eight days after receipt of the  
9 notice of demand, the lien is extinguished and no subsequent  
10 notice of lien may be recorded for the same claim and the claim  
11 shall not be asserted in any proceeding under this section.

12     3. In an action based on a broker's lien, a court may assess  
13 the nonprevailing parties with costs and reasonable attorney  
14 fees incurred by the prevailing parties. The court shall  
15 equitably apportion the assessed costs and attorney fees among  
16 all responsible nonprevailing parties.

17     Sec. 5. NEW SECTION. **570B.5 Sale of foreclosed property —**  
18 **alternative dispute resolution.**

19     1. When a lien claimed under this chapter is enforced, a  
20 sale of the lien property shall be ordered by the court having  
21 jurisdiction unless the parties agree to proceed pursuant to  
22 subsection 2.

23     2. If the broker and owner agree to alternative dispute  
24 resolution, the claim shall be heard and resolved in the agreed  
25 upon alternative-dispute-resolution forum. The court shall  
26 retain jurisdiction to enter and enforce the award or other  
27 result of alternative dispute resolution on all interested  
28 parties to the foreclosure.

29     Sec. 6. NEW SECTION. **570B.6 Broker to record release or**  
30 **satisfaction.**

31     1. A broker shall record a written release or satisfaction  
32 of the broker's lien in the county recorder's office of the  
33 county in which the lien was recorded within ten days after any  
34 of the following:

35     *a.* Moneys in an amount sufficient to release the broker's

1 lien established pursuant to section 570B.2 have been deposited  
2 in an escrow account established pursuant to section 570B.8.

3     **b.** The owner satisfies the claim upon which the broker's  
4 lien is based.

5     **c.** The broker fails to file a claim to enforce a lien within  
6 the time specified in section 570B.4.

7     **d.** The claim upon which the broker's lien is based has been  
8 resolved by a written agreement of the broker and owner, by a  
9 court, or by any process agreed to by the broker and owner.

10     2. On the day the release or satisfaction is recorded, the  
11 broker shall provide the owner with a copy of the release or  
12 satisfaction by personal delivery or by certified mail, return  
13 receipt requested.

14     Sec. 7. NEW SECTION.   **570B.7 Priority of mechanic's and**  
15 **other liens and mortgages.**

16     All valid mechanic's liens, arising pursuant to and  
17 perfected in accordance with chapter 572, and all prior  
18 recorded liens and mortgages have priority over a broker's lien  
19 perfected pursuant to section 570B.3.

20     Sec. 8. NEW SECTION.   **570B.8 Transfer of lien property —**  
21 **escrow account.**

22     1. Except as provided in subsection 4, to enable a transfer  
23 of lien property to close when a broker's perfected lien may  
24 otherwise prevent the closing, a separate escrow account shall  
25 be established by the owner into which moneys from the proceeds  
26 of the closing shall be deposited in an amount sufficient to  
27 release the broker's lien. The moneys shall be held in escrow  
28 and shall only be released as ordered by a court of competent  
29 jurisdiction, or as directed by agreement of the broker and  
30 owner or by any process agreed to by the broker and owner.

31     2. An owner shall not refuse to close a transfer of lien  
32 property because of the requirement to establish an escrow  
33 account under subsection 1. A prospective transferee of lien  
34 property shall not refuse to close the transfer of the lien  
35 property solely because the broker recorded a notice of lien

1 under this section, if all of the following have occurred:

2     a. The owner has established the escrow account required by  
3 subsection 1.

4        *b.* The prospective transferee has received from the  
5 escrow agent for the escrow account required by subsection  
6 1 a verified statement that the escrow account has been  
7 established.

3. When funds have been placed in escrow pursuant to subsection 1, the broker claiming a broker's lien under this chapter has an equitable lien on the escrowed funds, and the lien recorded on the lien property shall be extinguished as a matter of law.

13       4. The broker and owner are not required to follow the  
14 escrow procedures described in this section if either of the  
15 following applies:

16       a. An alternative procedure is available that would allow  
17 the transfer of lien property to close and that procedure is  
18 acceptable to the broker and prospective transferee.

19       b. The proceeds from the transfer of lien property would be  
20 insufficient to release all liens, including the broker's lien,  
21 that are claimed against the lien property.

22      Sec. 9. NEW SECTION. 570B.9 Liability of broker.

23       A broker that asserts or records a spurious or materially  
24 inaccurate broker's lien under this chapter or fails to release  
25 or acknowledge release or satisfaction of a broker's lien in  
26 compliance with this chapter, is liable for damages incurred  
27 by any person who has a legal or equitable interest in the lien  
28 property.

29	EXPLANATION
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30 The inclusion of this explanation does not constitute agreement with  
31 the explanation's substance by the members of the general assembly.

32 This bill relates to the filing of a broker's lien by a  
33 broker against an interest in commercial property that is the  
34 subject of a contract between the broker and the owner.

35 The bill defines “broker” as a real estate broker licensed



1 under Code chapter 543B. The bill defines "commercial  
2 property" as any parcel of real estate in Iowa other than real  
3 estate containing one to four residential units. The bill  
4 excludes from the definition of "commercial property" any real  
5 estate a governmental entity owns.

6 The bill provides that a broker who enters into a signed,  
7 written contract with an owner of commercial property for  
8 services related to selling, exchanging, purchasing, renting,  
9 leasing, or conveying any interest in the commercial property  
10 has a lien on that commercial property. The lien is effective  
11 only against the interest in the commercial property that is  
12 the subject of the contract.

13 The bill provides the manner in which a broker may perfect a  
14 broker's lien. A broker's lien is perfected when the broker  
15 is entitled to a fee or commission under the contract, has  
16 recorded a notice of lien in the county recorder's office,  
17 and the broker has provided a copy of the notice of lien to  
18 the owner or prospective transferee. The bill specifies the  
19 information that must be included in the notice of lien. The  
20 bill provides when a notice of lien must be recorded.

21 The bill provides that a broker must commence proceedings to  
22 enforce a lien within two years following the recording of the  
23 notice of lien. Failure to timely file extinguishes the lien,  
24 and the broker shall not file a subsequent notice of lien for  
25 the same claim.

26 The bill provides that an owner may demand that a broker  
27 commence a suit to enforce a broker's lien, and if the  
28 broker does not commence the suit within 28 days, the lien is  
29 extinguished, and the broker shall not file a subsequent notice  
30 of lien for the same claim.

31 The bill provides that when a broker's lien is enforced,  
32 a court shall order the sale of the lien property unless the  
33 parties agree to alternative dispute resolution.

34 The bill requires a broker to record a written release of  
35 the broker's lien within 10 days after a sufficient amount

1 of moneys to release the lien has been placed in an escrow  
2 account, the owner satisfies the claim, the broker fails to  
3 timely enforce the lien, the claim upon which the lien is based  
4 is resolved, or any other process agreed to by the broker and  
5 owner.

6 The bill provides that a valid mechanic's lien and all prior  
7 recorded liens and mortgages have priority over a perfected  
8 broker's lien.

9 The bill provides the process by which a broker and owner  
10 may establish an escrow account with the amount sufficient  
11 to release the broker's lien to enable a transfer of an  
12 interest in commercial property to close. If funds are  
13 placed in escrow, the broker claiming a broker's lien has an  
14 equitable lien on the escrowed funds, and the broker's lien is  
15 extinguished as a matter of law.

16 The bill provides that a broker that asserts or records a  
17 spurious broker's lien or fails to timely release a broker's  
18 lien is liable for damages incurred by any person who has a  
19 legal or equitable interest in the lien property.